

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIMON AND SIMON, PC, et al.,
Plaintiffs,
v.
ALIGN TECHNOLOGY, INC.,
Defendant.

Case No. 20-cv-03754-VC (TSH)

DISCOVERY ORDER

Re: Dkt. No. 184

This order is a follow-up to the Court’s November 28, 2022 order at ECF No. 209. For ALIGNPURCHPRIV00004559, the Court understands that the parties will address Plaintiffs’ challenge to Align’s privilege claim in the next round of challenges. The Court sustains Align’s claim of privilege as to ALIGNPURCHPRIV00005583 and ALIGNPURCHPRIV00007956.

The Court overrules Align’s claim of privilege as to ALIGNPURCHPRIV00009620 and its attachment ALIGNPURCHPRIV00009621. Notwithstanding the inclusion of an in house attorney in the group, these documents contain purely business discussion, with no legal advice provided or requested. Align’s “new description” of the basis for its claim of privilege (ECF No. 184-1) says that -9620 “reflects” legal advice. That could be true, but lots of non-privileged materials reflect legal advice. Fully executed contracts, signed by both sides, typically reflect the legal advice that each side’s lawyers provided to the business folks before they finalized the deal. The emails and phone calls in which the lawyers provided that advice are privileged, but the document that resulted from that advice is not. For that matter, the Golden Gate Bridge probably reflects legal advice from attorneys about how to ensure that the design and construction of the bridge complied with applicable legal requirements. Again, the conversations in which that advice was given were privileged, but the end result of that advice – i.e., the bridge – is not. Here, it may

be that the business strategies discussed in -9620 and -9621 reflect legal advice, and if so, then the communications in which that advice was given are privileged. But these resulting business discussion documents are not

IT IS SO ORDERED.

Dated: November 29, 2022


THOMAS S. HIXSON
United States Magistrate Judge

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